REMARKS

Claims 1-18, 20-37, and 39-44 are pending in the present Application. Claims 1-18, 20-37, and 39-46 are pending after entry of this Amendment. Support for these amendments can be found at least on page 6, lines 8-13 and page 10, lines 9-16 of the Specification, as originally filed. New claims 45 and 46 are being added. Support for these amendments can be found at least on page 10, lines 9-16 of the Specification, as originally filed. No new matter is being introduced by way of these amendments.

New claims

Claims 45 and 46 are being added. Support for these amendments can be found at least on page 10, lines 9-16 of the Specification, as originally filed. New claim 45 and similarly claim 46 explicitly claim comparing short-term viewership activity data with a compressed version of long-term viewership activity data.

Explaining the Applicants' claimed invention briefly, in one embodiment, a promotion agent embedded in a set top box associated with a viewer creates a log of the viewer's activities. See FIGS. 2 and 3B. After the promotion agent logs the viewer's activities for a period time, the logged activities are transmitted through messages from the promotion agent embedded in the set top box to a life cycle manager server which is part of a promotion server subsystem.

The life cycle manager from the logged activities and a program schedule determines the viewer's behavior for four, eight, twelve week periods or for some other time period specified by a user and a viewership profile of the viewer associated with the set top box is generated.

To target promotion deployment, short-term viewership activity is collected by the promotion agent embedded in the set top box and a compressed version of the long-term viewership activity is transmitted from the life cycle manager server to the promotion agent. See FIG. 3B. The promotion agent compares the short-term viewership activity collected with the compressed version of the long-term viewership activity transmitted. In this way, by comparing a compressed version, this embodiment of the Applicants' claimed invention facilitates the transmission of the long-term viewership activity data from the life cycle manger server to the promotion agent so that the promotion agent can perform the comparison in the set top box itself.

§ 103 Rejections

In the Office Action, claims 1-13, 20-32, and 39-44 were rejected under 35 U.S.C. §
103(a) as being unpatentable over Maissel *et al.* (U.S. Patent Number 6,637,090, hereinafter
"Maissel") in view of Barrett *et al.* (WO 01/22731 A1, hereinafter "Barrett"); and claims 14-18
and 33-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Maissel in view of
Barrett in further view of Swix et al. (U.S. Patent Number 6,718551, hereinafter "Swix").

Differences Between the Cited Art and the Claimed Invention

The MPEP at § 2143 states that:

"To establish a *prima facie* case of obviousness, three basic criteria must be met.
First, there must be some suggestion or motivation, either in the references
themselves or in the knowledge generally available to one of ordinary skill in the
art, to modify the reference or to combine reference teachings. Second, there must
be a reasonable expectation of success. Finally, the prior art reference (or
references when combined) must teach or suggest all the claim limitations."

The Applicants respectfully submit that the Office Action failed to establish a *prima facie*
case of obviousness with respect to showing that some combination of Maissel, Barrett and Swix
teach or suggests the Applicants' claimed, "a promotion agent <u>embedded in</u> a network
device...collecting short-term viewership activity data of the network device and <u>comparing</u> the
collected short-term activity data with the long-term activity data of the viewership profile in
order to determine a type of individual presently interacting with the network device," which is
clearly present in the above-rejected claims, as now amended.

1) *Maissel, Barrett, Swix, neither separately or combination, teach or provide motivation for
Applicants' comparing the collected short-term activity data with the long-term activity data of
the viewership profile in order to determine a type of individual presently interacting with the
network device.*

The Office Action states, "Maissel does not explicitly collecting [sic] short-term
viewership activity data of the network device." The Applicants agree. As Maissel does not
teach collecting short-term viewership activity data, it stands to reason that Maissel cannot teach
the Applicants' <u>comparing collected short-term activity data with long-term activity data</u> in order
to determine a type of individual presently interacting with the network device. Moreover, the

Office Action made no showing that Swix teaches or suggests Applicants' claim 1, as now amended.

Regarding Barrett, the Office Action alleges that Barrett teaches Applicants' claim 1 (a promotion agent embedded in a network device…collecting short-term viewership activity data of the network device and <u>comparing</u> the collected short-term activity data with the long-term activity data of the viewership profile <u>in order to determine a type of individual presently interacting with the network device</u>). The Applicants respectfully disagree.

Barrett describes a Television Commercial Selection and Adaptation System which employs a technique for identifying a viewer at a Remote Viewer Module and then targets a Television Commercial to the identified viewer at the Remote Viewer Module. <u>See</u> Barrett, page 3, claim 8. Specifically, in situations where a plurality of Viewer Profiles are associated with a Remote Viewer Module, the technique <u>uses a unidentified viewer's actions</u> at the Remote Viewer Module <u>to select a Viewer Profile amongst a plurality of Viewer Profiles</u> associated with the Remote Viewer Module. <u>See</u> Barrett, page 4 and 5, claim 8 element "h." In other words, in a situation where there are multiple Viewer Profiles associated with a Remote Viewer Module, each possibly identifying a viewer, a Viewer Profile alone is insufficient to identify the identity of a viewer. In such a situation, it is necessary to use a viewer's action at the Remote Viewer Module <u>to select one of the possible Viewer Profiles</u> to identify the viewer.

In a situation where there is <u>only one Viewer Profile</u> associated with a Remote Viewer Module, however, it is not necessary to use a viewer's action at the Remote Viewer Module to select a Viewer Profile to identify the viewer – there is <u>only one Viewer Profile to select</u>. <u>See</u> Barrett, page 4, claim 8 element "f." In this way, Barrett is merely <u>using a viewer's actions to select a Viewer Profile</u>, when it is not possible to identify a viewer for a Viewer Profile such is the case when there are multiple Viewer Profiles to select from.

Barrett's using a viewer's action at a Remote Viewer Module to select a Viewer Profile only when there are multiple Viewer Profiles to select from <u>is not the same</u> as the Applicants' comparing short-term activity data with long-term activity data to determine a type of individual presently interacting with the network device.

The Applicants clearly claim <u>comparing</u> the collected short-term viewership activity data with the long-term viewership activity data of the viewership profile <u>to determine the type of</u>

individual interacting. By comparing the collected short-term viewership activity data with the long-term viewership activity data of the viewership profile, the claimed invention is able to determine the type of individual interacting with a network device. See e.g., FIG. 3B. In contrast, Barrett uses the viewer's actions to select a Viewer Profile from multiple Viewer Profiles, each possibly identifying the viewer.

Moreover, the Barrett reference provides no motivation for the Applicants' claim 1 (comparing collected short-term viewership activity data with long-term viewership activity data of a viewership profile to determine the type of individual interacting with a network device). The situations described by Barrett (claim 8, elements f through i) clearly suggest limiting use of a viewer's action at a Remote Viewer Module to selecting a Viewer Profile when there are multiple Viewer Profiles associated with the Remote Viewer Module to select from.

2) *Maissel, Barrett, Swix, neither separately or combination, teach or provide motivation for Applicants' promotion agent embedded in a network device for collecting viewership activity data of the network device.*

The Applicants also clearly claim a promotion agent embedded in a network device for collecting viewership activity data of the network device. Briefly, in one embodiment of the Applicants' claimed invention, within the set top box itself, short term viewership activity associated with the set top box is compared in real time with long term viewership activity. Specification, page 10 lines 9-16. In this way, the Applicants' claimed invention establishes the type of individual watching a program on a given set top box at a given moment. *Id.*

By embedding a promotion agent, which can perform the comparison right at the set top box, significant advantages are provided over other schemes. For example, this approach reduces the need for set top boxes to transmit, in real time, short term viewership activity so that such activity may be compared with long term viewership activity. In a large network of many thousands of set top boxes the corresponding server communication load is greatly reduced. The problem of communication load is further compounded when short term viewership activity of viewers is especially active, e.g., viewers are changing channels frequently. In this way, by comparing short term and long term viewership activity right at the set top box itself, the Applicants' claimed invention reduces communication load.

As another example, the Applicants' claimed invention <u>separates</u> the task of generating viewership profiles of each viewer associated with each network device from the task of establishing the type of viewer watching a program on a given set top box at a given moment, as illustrated by FIGS. 2 and 3A. In this way, with the Applicants' claimed invention a single system is not relied upon to process viewership activity entirely. Instead, viewership activity is processed by two subsystems (e.g., a promotion agent subsystem and a promotion server subsystem of FIG. 2) each processing viewership activity differently <u>to provide a more complete perception of a viewer</u>, and thus allowing for targeted promotion deployment.

The Office Action states, "Maissel does not explicitly collecting [sic] short-term viewership activity data of the network device." The Applicants agree. As Maissel does not teach collecting short-term viewership activity data, it stands to reason that Maissel cannot teach the Applicants' promotion agent embedded in a network device for collecting viewership activity data of the network device. Furthermore, the Office Action made no showing that Swix teaches or suggests Applicants' claim 1, as now amended. Regarding Barrett, it is unclear from the rather sparse reference whether Barrett teaches the Applicants' promotion agent embedded in a network device for collect viewership activity data of the network device. As such, the Applicants respectfully submit the Barrett reference does not teach nor does it provide motivation for the Applicants' claim 1, as now amended.

For reasons set forth above, the Applicants respectfully submit that the Office Action failed to establish a *prima facie* case of obviousness with respect to the Applicants' claim 1 (a promotion agent embedded in a network device...collecting short-term viewership activity data of the network device and comparing the collected short-term activity data with the long-term activity data of the viewership profile in order to determine a type of individual presently interacting with the network device). As such, the Applicants respectfully submit claim 1 is allowable.
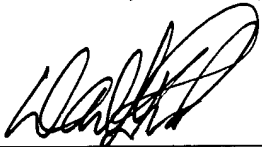
Claim 26 recites similar limitations as claim 1. As such, the Applicants respectfully submit claim 26 is allowable for at least the same reasons. Therefore, the Applicants respectfully request that the above rejection of claims 1-18, 20-37 and 39-44 be withdrawn.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims that will be pending after entry of this Amendment (claims 1-18, 20-37, and 39-46) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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